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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF PENNSYLVANIA

3 INDECK KEYSTONE ENERGY LLC,

4 Plaintiff, Civil Action

5 vs.

No. 04-325 Erie

6 VICTORY ENERGY OPERATIONS,
7 LLC,

8 Defendant.

9 DEPOSITION OF CHRISTOS TRIFON PETCOS
10 WEDNESDAY, FEBRUARY 15, 2006

11 Deposition of CHRISTOS TRIFON PETCOS, taken
12 pursuant to Notice and the Federal Rules of Civil
13 Procedure, by and before Cathy R. Mull, Notary Public in
14 and for the Commonwealth of Pennsylvania, at the offices
15 of Schnader Harrison Segal & Lewis LLP, Fifth Avenue
16 Place, Suite 2700, 120 Fifth Avenue, Pittsburgh,
17 Pennsylvania 15222-3001 commencing at 10:07 o'clock a.m.,
18 on the day and date above set forth.
19
20
21
22
23

EXHIBIT

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P R O C E E D I N G S

CHRISTOS TRIFON PETCOS,

having been duly cautioned and sworn, as hereinafter
certified, was examined and testified as follows:

EXAMINATION

BY MR. SHEEAN:

Q Sir, would you please state your full name for the
Record.

A Sure. Christos Trifon Petcos. C-h-r-i-s-t-o-s,
middle name T-r-i-f-o-n, P-e-t-c-o-s for the last name.

Q Mr. Petcos, do you recall that approximately four
months ago we got together and you gave your Deposition in
this case as an individual?

A Yes.

Q The rules that we went over during that Deposition
are going to apply again here today. Okay?

A Okay.

Q Do you also understand that as opposed to your last
Deposition where you were testifying as an individual, you
have been designated here today to testify on behalf of
Indeck Keystone Energy?

A Yes.

MR. SHEEAN: Let's go ahead and mark as

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1 the testimony.

2 Q Topic No. 12, trade secrets.

3 MR. GISLESON: One second. I forgot
4 something in my office on this subject.

5 (Thereupon, a recess was taken).

6 MR. SHEEAN: Let's go back on the Record.

7 BY MR. SHEEAN:

8 Q Can you identify for me every trade second that IKE
9 believes was provided to Victory Energy pursuant to the
10 terms of the License Agreement.

11 A The overall design of the Keystone boiler by itself
12 as well as in combination with the KPSC software based on
13 its proven performance and enhancements, over time VEO's
14 marketing materials reference the advantages that the
15 Keystone has over other boilers.

16 Our KPSC software, all tube layouts, M series
17 custom and O series, design of our welded walls, design of
18 our water cooled burner throat, steam purity designs,
19 assembly sequences, design performance sheets, all
20 printouts of thermal performance sheets, and engineering
21 methodologies and design standards, structural based
22 design allows for thermal expansion from front to rear,
23 front and rear water wall designs, refractory design, tube

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1 clearances, drum internals, the vortex designs, the
2 chevron designs, the internal baffling of the drums,
3 structural size, the structural jacking points, pads,
4 rings on all four corners of the boiler, the load moves
5 from the pad up through the casing design and onto the
6 upper drum, water cooled front wall and burner throat
7 refractory tile and insulation design allows provisions
8 for expansion sales upper and lower drum.

9 Inner outer casing seal system allows for
10 expansion, the stiffener design, the chemical feed,
11 internal piping arrangement, the blow down piping internal
12 arrangement, dry can on incline baffle design, dry can on
13 the information in our operations and maintenance manuals
14 how EPTI and IKE recommend startup and operation and shut
15 down of our units, superheater design and sizing criteria
16 and operation criteria, superheater supports both our lug
17 support design and our steam cooled support design and our
18 wall attachment designs, superheater penetration design
19 through the rear wall, the welding of the superheater, the
20 platen loops.

21 The Keystone tile furnace floor design to control
22 superheat temperature, the water wash drain design, steam
23 outlet location on steam drums, feedwater heating coil

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1 designs, mud drum steel coil designs, flue gas outlet duct
2 arrangements, furnace aspect ratios, widths, height of
3 tube layouts for M series and special O series, furnace
4 tube slopes, the buckstay designs, the tube and membrane
5 designs.

6 Also separate steam drum internals to isolate flow
7 in the front wall design, the anti vibration bar design
8 that mitigates and minimizes flow induced vibration, steam
9 diameter drum sizing criteria for various steam flows,
10 drum water level criteria for operation, normal low, high
11 water logs, the heat transfer coefficients throughout the
12 unit, the furnace, the boiler superheater, the economizer,
13 furnace exit gas temperature sizing criteria, flue gas
14 draft loss calculation methodologies, the pinch and
15 approach points, limitations on feedwater flue gas
16 temperature, saturation temperatures.

17 Various manufacturing specifications and
18 requirements, those of which are also beyond code
19 requirements, limits on minimum shell and tube
20 thicknesses, these are not on the limited list.

21 Overall everything related to the design of the
22 Keystone package boiler is a trade secret.

23 Q First, let me ask you, for those items, those

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1 aspects that you identified as trade secrets, were those
2 created by IKE's predecessors? I mean, they would have
3 had to have been; right?

4 A Yes.

5 Q What I asked you was were they provided to VEO
6 under the License Agreement and IKE hasn't provided any
7 information to VEO that I know of.

8 A Yes. The answer is yes.

9 Q What efforts did IKE's predecessors make to
10 maintain the confidentiality of those trade secrets?

11 A Trade secrets remain confidential even if certain
12 general design features are known. For example, O type
13 are known from sales literature. That information cannot
14 be used to design and manufacture the boilers or to make
15 them operate safely to meet performance requirement.
16 There is no distribution of detailed design drawings
17 unless confidentiality agreements, control of drawings
18 including limited disclosure of drawings internally and
19 externally.

20 Engineers have confidentiality agreements, access
21 to computer systems are password protected, access to UNIX
22 system was password protected, limited distribution of
23 technical information within the company and control of

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1 drawings, drawings stamped proprietary and confidential,
2 confidentiality agreements with manufacturers or
3 construction contractors.

4 Q Anything else?

5 A Not at this time.

6 Q Did Mark White sign a Confidentiality Agreement
7 with EPTI?

8 MR. GISLESON: I think, just so its clear,
9 your topic No. 12 is efforts by IKE to maintain the
10 confidentiality.

11 MR. SHEEAN: Why is that relevant to whether
12 or not these trade secrets are -- --

13 MR. GISLESON: We'll object as outside the
14 scope.

15 MR. SHEEAN: Okay. You can answer.

16 A I don't know if he did, but we will look into it
17 from our predecessor's files.

18 Q Okay. Did Mark White have access to the various
19 aspects of the Keystone technology that you described as
20 trade secrets?

21 MR. GISLESON: Same objection.

22 A Not everything.

23 Q What do you believe he didn't have access to?

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1 A While he was --

2 Q While he was at Erie Power.

3 A While he was at Erie Power?

4 Q Or Aalborg, A-a-l-b-o-r-g, Zurn.

5 MR. GISLESON: Same objection. He is
6 testifying here as IKE's designee and you're talking about
7 what was happening at EPTI. So to the extent you have
8 knowledge as IKE's representative on that subject --

9 A As IKE's representative, we don't have knowledge on
10 that.

11 Q Okay. Do the trade secrets that you identified
12 remain confidential today, to the best of your knowledge?

13 A Yes.

14 Q Would that be true even if various aspects of the
15 Keystone design are in the public domain?

16 MR. GISLESON: Objection. Assumes facts not
17 in evidence. No foundation. Calls for a legal
18 conclusion.

19 MR. SHEEAN: You can answer.

20 MR. GISLESON: Argumentative as well.

21 A Yes, whether its individually or all grouped
22 together to operate as an overall Keystone package boiler.

23 Q I'm not talking about any aspect that you have

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1 identified. Would you agree if its in the public domain
2 its no longer a trade secret?

3 A No.

4 Q You wouldn't agree with that?

5 MR. GISLESON: Same objections.

6 A IKE's interpretation is that, as stated earlier,
7 even if there is reference to one or more of those items
8 in the public domain, the public cannot design those
9 aspects just from referencing them in the public domain.

10 Q You agree with me, wouldn't you, that the License
11 Agreement specifically excludes from the secrecy
12 requirements for technical information any information
13 that is in the public domain under Clause 5 of the License
14 Agreement; correct?

15 MR. GISLESON: Objection. The License
16 Agreement speaks for itself.

17 BY MR. SHEEAN:

18 Q Specifically, on page 6 of the License Agreement,
19 VEO 1177 5.b) reads, Notwithstanding the foregoing, no
20 secrecy obligation herein shall apply to technical
21 information which: At the time of disclosure is generally
22 available to the public;

23 ii: After disclosure by licensor becomes generally

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1 available to the public by publication or otherwise
2 through no fault of licensee;

3 iii: Was in licensee's possession prior to the
4 disclosure hereunder and which was not acquired directly
5 or indirectly from licensor and

6 iv: Was received by licensee from a third party
7 imposing no obligation of confidentiality and who did not
8 acquire any such information directly or indirectly from
9 licensee.

10 Do you see that?

11 A I see that.

12 Q Do you believe if the License Agreement is within
13 the public domain there is no secrecy obligation pursuant
14 to the License Agreement?

15 MR. GISLESON: Objection.

16 A No. IKE's interpretation is that all the items
17 listed, the detailed trade secret and the design
18 information on how to actually design each and every one
19 of those, is not in the public domain and its not --
20 that's it.

21 Q Are you confident that each trade secret that you
22 identified for me in that laundry list of trade secrets
23 was provided to Victory Energy pursuant to the terms of

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1 the License Agreement, because that was my question?

2 A All those trade secrets were not pursuant to the
3 License Agreement. Those trade secrets were provided to
4 Victory, not all of which were pursuant to the License
5 Agreement. Some were provided on a case by case agreement
6 to allow VEO to pursue the License Agreement.

7 Q Do you mean a reference to --

8 MR. GISLESON: One second.

9 (Discussion off the Record).

10 A IKE's belief is that EPTI permitted VEO to sell
11 products outside of the License Agreement as defined in
12 Annex 1 on a case by case basis. However, all the other
13 provisions as far as secrecy and that of the License
14 Agreement remain intact.

15 Q If the information that Victory Energy obtained
16 from EPTI was outside the scope of the License Agreement,
17 how is it that the rest of the terms of the License
18 Agreement apply?

19 A As far as the secrecy and the royalty payments.

20 Q That's just your interpretation of the License
21 Agreement?

22 A Correct.

23 Q Are you confident that --

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1 A As well as the parties performance under the
2 License Agreement, because they both agreed to operate
3 under the License Agreement.

4 Q Are you confident that Victory Energy received
5 technical information relating to the buckstays?

6 A I don't know exactly if the buckstay design
7 information was provided to VEO without going through the
8 documents. I was providing trade secrets.

9 Q Okay.

10 A Of the Keystone product line.

11 Q So you don't know specifically whether each and
12 every one of those was part of what was provided to
13 Victory Energy; is that a fair statement?

14 A I believe they were and I would like to refer again
15 to what's in the documents behind Item 5 of what you will
16 be getting a copy of, as far as our understanding of what
17 EPTI was to provide, the broad categories of documentation
18 described in Clause 1.

19 Q Are there any aspects of the design and
20 manufacturing process of the Keystone boiler that IKE
21 asserts are proprietary above and beyond the trade secrets
22 that you have just identified? This is topic No. 13.

23 A IKE considers the overall design and its components

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1 proprietary, consistent with the prior description of the
2 trade secrets.

3 Q Okay. I think the -- is it fair to say that the
4 trade secrets you identified in response to topic 12
5 include trade secrets relative to design and manufacturing
6 processes? I don't want to cover ground we have already
7 covered.

8 A Yes.

9 Q Because 13 I was breaking out, you know, the
10 feature of the Keystone boiler itself and the design and
11 engineering process and I understand you basically put
12 those things together, which is fine. Like I said, I
13 don't want to cover the same thing again.

14 Are the efforts that IKE identifies as confidential
15 the same as what you previously testified?

16 A That's correct.

17 Q And to the best of your knowledge, none of the
18 design information that you deem to be a trade secret are
19 within the public domain; is that right?

20 A Yes.

21 Q Can you identify for me each and every trade secret
22 you allege that Victory Energy misappropriated from either
23 Erie Power or IKE?

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1 A IKE believes that VEO misappropriated the design
2 for the Keystone M series boiler as well as part of the
3 features that are not part of the standard series such as
4 membrane walls and water cooled throats. Under the
5 agreement, i.e., the products defined in Annex 1, VEO
6 utilized technology it received from EPTI on a project
7 specific basis that was out of the scope of the agreement
8 after EPTI notified VEO on March 26, 2004, that it must
9 confine itself to the scope of the agreement.

10 IKE is investigating whether VEO incorporated the
11 license technology. Discovery is continuing on that
12 issue.

13 In addition, I would refer to my comments on item
14 12 previously, as well as the documents that are behind
15 tab 5.

16 Q Are the damages that IKE is seeking for
17 misappropriating the design as you described in any way
18 different from the damages its seeking generally for
19 trademark infringement and unauthorized modification and
20 sale of Keystone boilers?

21 A No.

22 Q Topic No. 15 is all instances that IKE is aware of
23 where VEO sold a product outside the scope of the License